In the High Court of Judicature at Madras

Dated :- 1`4.09.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

W.A.No.1010 of 2001

1. M.L.Krishnamoorthy (died)
2. M.K.Sathyamurthy ... Appellants/Petitioner.

Appellant No.2 is substituted in the place of 1st appellant vide order dated 7.3.2006 made in W.A.M.P.No.4038 of 2005.

Vs.

1. The Government of Tamilnadu
rep.by Secretary to Government
Municipal Administration and
Water Supply Department
Fort St.George, Madras - 9

2. The Gudiyattam Municipality
rep.by its Commissioner
Gudiyattam
N.A.A.District. ... Respondents/Respondents.

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 31.8.1998 made in W.P.No.21193 of 1994 presented under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the 2nd Respondent from assessing property tax for different Door Numbers 204, 204-A, 204-B, 205 and 206 faces Thazhayatham Bazaar and Door Nos.18,18-A,19 and 19-A faces Annaji Rao Street, Gudiyattam and direct the levy of property tax for the building as a whole.

For Appellant :- Mr.T.Dhanyakumar
For Respondents:- Mr.P.Subramanian,G.A.(R1)
Mr.K.A.Ravindran (R2)

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J.)

The Writ Appeal is preferred against the order of the learned single Judge rejecting the writ petition wherein the appellant herein sought for a writ of mandamus to forbear the second respondent from assessing the property tax for the various door numbers 204, 204-A, 204-

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B, 205 and 206 faces Thazhayatham Bazaar and D.Nos.18, 18-A, 19 and 19-A faces Annaji Rao street, Gudiyattam N.A.A.District and direct the levy of property tax for the building as a whole.

2. It is stated in the affidavit filed in support of the writ petition that the appellant owned a building in the municipal limits of Gudiyattam Municipality. There were different portions let out to various tenants and each portion was given a separate door number by the second respondent Municipality for the purpose of identification. The grievance of the appellant is that the second respondent has levied tax for different door numbers as if the property is different without looking at the fact that the property is one and the same for the purpose of levying the tax. Aggrieved by the demand raised for the different door numbers without an assessment, the writ petition is preferred before this Court for quashing of the demand by contending that the entire property has to be taken as one for the purpose of levy of property tax.

3. By order dated 31.8.1998 in W.P.No.21193 of 1994, the learned single Judge dismissed the writ petition on the premise that Section 82 (1) of the Municipalities Act contemplates that every building shall be assessed together with the site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises. Only if the appellant is using the adjacent premises as appurtenant to the main building, that could be assessed as a single building. The fact remains that the appellant has opted for different door numbers. The question of taking adjacent buildings as part of the main building could not be accepted. On the said view, the learned single Judge rejected the plea for assessment as a single unit. Aggrieved by this the present writ appeal has been preferred.

4. It is not denied by the learned counsel for the appellant that the provisions of District Municipalities Act provides for an appeal remedy to the Taxation Appellate Committee under Section 89 of the District Municipalities Act and further appeal to the District Court. On the face of the availability of an alternative remedy, the plea taken by the appellant that the entire building has to be taken as one unit and different numbers allotted to the adjacent premises could not be viewed as independent units could effectively be agitated before the Taxation Appellate Committee. On the face of the assessment made, the proper course for the appellant herein is to seek the appeal remedy.

5. However, taking note of the fact that the matter has been pending before this Court right from 1994, the respondents herein are directed to assess the property tax payable by the writ appellant. As and when such quantification is done and intimated to the appellant herein, the writ appellant shall pay 75 percent of the demand intimated to the writ appellant within two weeks from the date of intimation and thereafter within a period of two weeks the writ appellant shall prefer the appeals if he is so advised, before the Taxation Appellate Committee

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under Section 89 of the District Municipalities Act. In the event of the appellant not paying the tax within the two weeks from the date of intimation, the right granted under this order to prefer an appeal shall stand abated. In the above circumstances, the writ appeal stands disposed of directing the respondents to assess and intimate the amount of tax payable by the appellant herein. The order passed by the learned single Judge is modified in the above terms. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government
   Municipal Administration and
   Water Supply Department
   Government of Tamilnadu
   Fort St.George, Madras - 9

2. The Commissioner
   Gudiyattam Municipality
   Gudiyattam
   N.A.A.District.

+ 1 CC To Mr. T.Dhanyakumar, Advocate SR NO.57973

+ 1 CC To Mr. K.A.Ravindran, Advocate SR NO.57645

+ 1 CC to the Government Pleader SR NO 57698

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